

Senate Bill No. 1117

Passed the Senate August 19, 2014

Secretary of the Senate

Passed the Assembly August 18, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 13142, 13144, 13145, 13148, 13149, and 13152 of the Food and Agricultural Code, relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

SB 1117, Monning. Pesticide Contamination Prevention Act.

Existing law requires the registration of pesticides in this state for agricultural use, and requires a person who has registered a pesticide to submit specified information for each active ingredient in each pesticide registered. Existing law requires the Department of Pesticide Regulation to establish specific numerical values for factors relating to pesticide use and groundwater, including, among others, water solubility and field dissipation, and to post certain information on its Internet Web site for each pesticide registered. Existing law requires the Director of Pesticide Regulation to establish, by regulation, a Groundwater Protection List that includes pesticides that have the potential to pollute groundwater, and, under certain circumstances, to regulate their use.

This bill would revise the information required to be included in the Groundwater Protection List to include each active ingredient, other specified ingredient, or degradation product of a pesticide that, when applied, has the potential to pollute groundwater, and would require the director, in consultation with a specified subcommittee of the director's pesticide registration and evaluation committee, to develop a peer reviewed method to determine that potential, as specified. The bill would require the director to regulate each active ingredient, other specified ingredient, or degradation product of a pesticide on the Groundwater Protection List that is detected and determined to be a result of lawful agricultural use, and would revise the information that the department is required to post on its Internet Web site. The bill would delete provisions requiring dealers of pesticides to make quarterly reports to the director on certain sales of pesticides to persons who are not required to file a report, as specified. The bill would make conforming and other related changes to provisions relating to the detection and regulation of active

ingredients, other specified ingredients, and degradation products of pesticides.

Existing law specifies that the director may authorize the continued registration, sale, and use of a pesticide found to have migrated, including if an active ingredient is found in the groundwaters in the state, to avoid severe economic hardship on the state's agricultural industry. Existing law requires the department to conduct ongoing soil and groundwater monitoring of those pesticides for which the director has authorized continued registration, sale, and use.

This bill would require the department, for a pesticide whose continued use is allowed, to continuously review new science and data that could impact the validity of a finding that the pesticide has not polluted and does not threaten to pollute the groundwater of the state. The bill would require the department, as prescribed, to either mitigate the threat presented by the pollution or subject the pesticide again to specified review. The bill would revise the definitions applicable to the provisions above relating to pesticide contamination prevention.

The people of the State of California do enact as follows:

SECTION 1. Section 13142 of the Food and Agricultural Code is amended to read:

13142. For purposes of this article, the following definitions apply:

(a) "Active ingredient" has the same meaning as defined in Section 136 of Title 7 of the United States Code.

(b) "Agricultural use" has the same meaning as defined in Section 11408.

(c) "Board" means the State Water Resources Control Board.

(d) "Chemigation" means a method of irrigation whereby a pesticide is mixed with irrigation water before the water is applied to the crop or to the soil.

(e) "Degradation product" means a substance resulting from the transformation of a pesticide by physicochemical or biochemical means.

(f) "Groundwater protection data gap" means that, for a particular pesticide, the director, after study, has been unable to determine that each study required pursuant to subdivision (a) of

Section 13143 has been submitted or that each study submitted pursuant to subdivision (a) of Section 13143 is valid, complete, and adequate.

(g) “Henry’s Law constant” is an indicator of the escaping tendency of dilute solutes from water and is approximated by the ratio of the vapor pressure to the water solubility at the same temperature.

(h) “Pesticide” is defined in Section 12753.

(i) “Pesticide registrant” means a person that has registered a pesticide pursuant to this chapter.

(j) “Pollute” means to introduce a pesticide product into the groundwaters of the state resulting in an active ingredient, other specified ingredient, or a degradation product of a pesticide above a level that does not cause adverse health effects, accounting for an adequate margin of safety.

(k) “Pollution” means the consequence of polluting.

(l) “Soil adsorption coefficient” is a measure of the tendency of pesticides, or their biologically active transformation products, to bond to the surfaces of soil particles.

(m) “Soil microbial zone” means the zone of the soil below which the activity of microbial species is so reduced that it has no significant effect on pesticide breakdown.

SEC. 2. Section 13144 of the Food and Agricultural Code is amended to read:

13144. (a) The department shall establish specific numerical values for water solubility, soil adsorption coefficient (Koc), hydrolysis, aerobic and anaerobic soil metabolism, and field dissipation. The values established by the department shall be at least equal to those established by the Environmental Protection Agency. The department shall revise the numerical values when the department finds that the revision is necessary to protect the groundwater of the state. The numerical values established or revised by the department shall always be at least as stringent as the values being used by the Environmental Protection Agency at the time the values are established or revised by the department.

(b) On or before December 31, 2004, and updated at least annually thereafter, the director shall post the following information on the department’s Internet Web site for each pesticide registered for agricultural use and during years that specific numerical values are revised:

(1) A list of each active ingredient, other specified ingredient, or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.

(2) The Groundwater Protection List established pursuant to subdivision (d) of Section 13145.

(3) For each pesticide listed pursuant to paragraph (2) for which information is available, a list of the amount sold in California during the most recent year for which sales information is available and where and for what purpose the pesticide was used, when this information is available in the pesticide use report.

(c) The department shall determine, to the extent possible, the toxicological significance of the pesticides listed in the Groundwater Protection List.

SEC. 3. Section 13145 of the Food and Agricultural Code is amended to read:

13145. (a) Any registrant of a pesticide identified in paragraph (1) of subdivision (b) of Section 13144 is subject to a fine of up to ten thousand dollars (\$10,000) for each day the groundwater protection data gap exists. In determining the amount of the fine, the director shall consider both of the following:

(1) The extent to which the registrant has made every effort to submit valid, complete, and adequate information within the required time limits.

(2) Circumstances beyond the control of the registrant that have prevented the registrant from submitting valid, complete, and adequate information within the required time limits.

(b) If there is a dispute between the director and a registrant regarding the existence of a groundwater protection data gap and the director desires to levy a fine on the registrant pursuant to this section, the director shall submit the issues of the dispute to the subcommittee created pursuant to subdivision (b) of Section 13150. The subcommittee shall review the evidence submitted by the registrant and the director and make recommendations to the director on whether or not the groundwater data gap exists.

(c) Subdivisions (a) and (b) shall not apply to pesticide products whose registration has lapsed or has been canceled, or to products that have been granted a current extension pursuant to Section 13143.

(d) The director shall, by regulation, establish the Groundwater Protection List, which shall include each active ingredient, other

specified ingredient, or degradation product of a pesticide that, when applied, has the potential to pollute groundwater.

(e) The director, in consultation with the subcommittee created pursuant to subdivision (b) of Section 13150, shall develop a peer reviewed method to determine the potential of a pesticide to pollute groundwater using specific numerical values established pursuant to subdivision (a) of Section 13144. The director may revise this method, subject to peer review. The peer review shall be conducted using the same process as described in Section 57004 of the Health and Safety Code. When a chemical is listed by regulation using this method, no further peer review of the method is required.

(f) Each active ingredient, other specified ingredient, or degradation product of a pesticide on the Groundwater Protection List that is detected pursuant to Sections 13148 and 13149 and determined to be a result of lawful agricultural use shall be regulated to prevent groundwater pollution in accordance with this article.

(g) Any person who uses a pesticide that has been placed on the Groundwater Protection List and does not file a report pursuant to Section 12979, is required to report to the county agricultural commissioner the use of the pesticide on a form prescribed by the director. The reporting deadline shall conform to the deadline established for the reporting of the use of restricted materials.

SEC. 4. Section 13148 of the Food and Agricultural Code is amended to read:

13148. (a) In order to more accurately determine the mobility and persistence of the pesticides identified in the Groundwater Protection List, and to determine if these pesticides have migrated to groundwaters of the state, the director shall conduct soil and groundwater monitoring statewide in areas of the state where the pesticide is primarily used or where other factors identified pursuant to Section 13143 and the Groundwater Protection List, including physicochemical characteristics and use practices of the pesticides, indicate a probability that the pesticide may migrate to the groundwaters of the state. The department shall monitor for the active ingredient, other specified ingredient, or degradation product of the pesticide listed in the Groundwater Protection List. The monitoring shall commence within one year after the pesticide is placed on the Groundwater Protection List and shall be conducted in accordance with standard protocol and testing

procedures established pursuant to subdivision (b). Monitoring programs shall replicate conditions under which the pesticide is normally used in the area of monitoring. In developing a monitoring program, the director shall coordinate with other agencies that conduct soil and groundwater monitoring.

(b) Within 90 days after a pesticide is placed on the Groundwater Protection List pursuant to subdivision (d) of Section 13145, the director, in consultation with the board, shall develop a standard protocol and testing procedure for each pesticide identified pursuant to subdivision (d) of Section 13145.

(c) The director shall report all monitoring results to the State Department of Public Health and the board.

SEC. 5. Section 13149 of the Food and Agricultural Code is amended to read:

13149. (a) Within 90 days after the active ingredient, other specified ingredient, or degradation product of a pesticide is detected under any of the conditions listed in paragraph (1) or (2), the director shall determine whether the detection resulted from agricultural use in accordance with state and federal laws and regulations, and shall state in writing the reasons for the determination.

(1) An active ingredient, other specified ingredient, or degradation product of a pesticide has been found at or below the deepest of the following depths:

(A) Eight feet below the soil surface.

(B) Below the root zone of the crop where the active ingredient, other specified ingredient, or degradation product was found.

(C) Below the soil microbial zone.

(2) An active ingredient, other specified ingredient, or degradation product of a pesticide has been found in the groundwaters of the state.

(b) Upon a determination by the director that a pesticide meets any of the conditions specified in paragraph (1) or (2) of subdivision (a) as a result of agricultural use in accordance with state and federal laws and regulations, the director shall immediately notify the registrant of the determination and of the registrant's opportunity to request a hearing pursuant to subdivision (c).

(c) Any pesticide that meets any of the conditions in subdivision (b) shall be subject to Section 13150 if the registrant of the

pesticide requests, within 30 days after the notice is issued, that the subcommittee conduct a hearing, as described in Section 13150. Notwithstanding any other law, if the registrant does not request the hearing within 30 days after the notice is issued, the director shall cancel the registration of the pesticide.

(d) For purposes of this section, any finding of a pesticide shall result from either an analytical method approved by the department that provides unequivocal identification of a chemical, such as mass spectroscopy, or from verification, within 30 days, by a second analytical method or a second analytical laboratory approved by the department.

SEC. 6. Section 13152 of the Food and Agricultural Code is amended to read:

13152. (a) (1) The department shall conduct ongoing soil and groundwater monitoring of any pesticide whose continued use is permitted following the issuance of findings by the director pursuant to subdivision (d) of Section 13150. The department shall continuously review new science and data that could impact the validity of a finding that a pesticide reviewed pursuant to Section 13150 has not polluted and does not threaten to pollute the groundwater of the state.

(2) If the department determines that there is new science or data that could impact the validity of a finding described in paragraph (1), the director shall either mitigate the threat presented by the pollution or subject the pesticide again to the Section 13150 review process.

(b) Any pesticide monitored pursuant to this section that is determined, by review of monitoring data and any other relevant data, to pollute the groundwaters of the state two years after the director takes action pursuant to paragraph (2), (3), or (4) of subdivision (d) of Section 13150 shall be canceled unless the director has determined that the adverse health effects of the pesticide are not carcinogenic, mutagenic, teratogenic, or neurotoxic.

(c) The department shall maintain a statewide database of wells sampled for pesticide active ingredients. All agencies shall submit to the department, in a timely manner, the results of any well sampling for pesticide active ingredients and the results of any well sampling that detect any pesticide active ingredients.

(d) Not later than June 30, 1986, the director, the State Department of Public Health, and the board shall jointly establish minimum requirements for well sampling that will ensure precise and accurate results. The requirements shall be distributed to all agencies that conduct well sampling. All well sampling conducted after December 1, 1986, shall meet the minimum requirements established pursuant to this subdivision.

(e) The department shall post the following information on its Internet Web site, updated no later than December 1 of each year:

(1) The number of wells sampled for pesticide active ingredients, the location of the wells from which the samples were taken, the well numbers, if available, and the agencies responsible for drawing and analyzing the samples.

(2) The number of well samples with detectable levels of pesticide active ingredients, the location of the wells from which the samples were taken, the well numbers, if available, and the agencies responsible for drawing and analyzing the samples.

(3) An analysis of the results of well sampling described in paragraphs (1) and (2), to determine the probable source of the residues. The analysis shall consider factors such as the physical and chemical characteristics of the pesticide, volume of use and method of application of the pesticide, irrigation practices related to use of the pesticide, and types of soil in areas where the pesticide is applied.

(4) Actions taken by the director and the board to prevent pesticides from migrating to groundwaters of the state.

Approved _____, 2014

Governor